STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

GTE North Incorporated	)	
	)	**ICC Docket No. 00-0511**
Proposed establishment of collocation tariffs.	)	
	)	**(consol.)**
GTE South Incorporated	)	
	)	**00-0512**
Proposed establishment of collocation tariffs.	)	

REPLY BRIEF ON REHEARING

OF THE STAFF

OF THE ILLINOIS COMMERCE COMMISSION

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I. ARGUMENT

In its Initial Brief, Verizon argues that it has "met its burden and established a prima facie case" supporting its rates. Verizon IB, at 5. In making this argument, Verizon asserts that the arguments of Staff and IRCA are "clearly circular in nature because if Verizon were to in fact allocate costs in the manner [proposed by Staff and IRCA], there would be no shared labor adder because those costs would then be included in the loaded labor rate as direct costs." Id. Verizon also argues that Staff and IRCA "attempt to avoid their burden of going forward with a proper evidentiary presentation", while Verizon met its burden. Id. Verizon is mistaken on both accounts – through both proceedings, the initial hearing and the rehearing, Verizon has not shown how the denied costs flow down to, or are attributed to, the collocation activities.

A. Federal Law Does Not Require Verizon To Show Shared Costs Are Direct Costs

Verizon attempts to rebut Staff and IRCA's arguments that Verizon needs to directly correlate the shared costs to collocation activities by arguing that the shared costs would "then be added in the loaded labor rate as direct costs." Verizon IB at 5. This fundamentally misconstrues Staff's contention. First, Staff and IRCA's arguments regarding what Verizon must show to correlate costs with collocation activities are based on federal law. Second, Verizon apparently

confuses what it must prove to allocate costs to shared costs with what it must prove to allocate costs to direct costs.

The FCC requires the incumbent local exchange carrier ("ILEC") "to prove to the state commission the nature and the magnitude", First Report and Order[1], ¶682, of the shared costs to the greatest extent possible. Id. ¶680. The FCC has determined that, "certain shared costs that have conventionally been treated as common costs (or overheads) shall be attributed directly to the individual elements to the greatest extent possible," id. ¶682, and that "[t]he [cost] study must explain with specificity why and how specific functions are necessary to provide network elements," id. ¶691. As discussed in Staff's initial brief, Verizon has failed to demonstrate how the costs[2] denied by the Commission are attributed to collocation in both the initial hearing and this rehearing. Staff IB at 4-7.

Second, Verizon contends that, under Staff's and IRCA's analyses, the showing it must make to prove that costs are attributable to shared costs would essentially make the shared cost a direct cost. Verizon IB at 5. However, this is simply incorrect; the showing Verizon must make to comply with the federal requirements above is evident in the distinction between shared and direct costs. A shared cost is "incurred when two or more outputs are produced in fixed proportion by the same production process." First Report and Order, ¶676. As such, shared costs are unique from direct costs and do not need to be attributed

[1] Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, 95-185, FCC 96-325 (rel. Aug. 8, 1996) ("First Report and Order").
[2] Those costs are direct support and direct supervision, indirect supervision, indirect support functions, tools, motor vehicles, dispatch and direct departmental expense (hereafter referred to

to cost elements *in the same manner* as direct costs. However, Verizon has failed to make any showing whatever that the denied costs are part of collocation (i.e. the production process). Instead, Verizon simply assumes that it has a right to collect those costs. This is demonstrated in Exhibit BKE-1 on rehearing, where Verizon derives the denied costs associated with cageless collocation. *See* Verizon Exhibit BKE-1 on rehearing, column J. This exhibit merely asserts, without support, that certain dollar amounts are associated with cageless collocation. Nowhere in Verizon's evidentiary showing – this exhibit, Verizon's cost study, and Ms. Ellis' testimony – is it made clear how the denied costs apply to the process of providing cageless collocation. This, of course is precisely the showing that Verizon must make to recover such costs. Accordingly, its burden remains unmet.

Additionally, the FCC's requirement that shared and common costs be attributed to the greatest extent possible simply does not go as far as Verizon argues that it does -- that shared costs be considered direct costs. The shared costs do not need to be attributed to an activity the same way as direct costs. It merely needs to be shown, to the greatest extent possible, that the cost at issue is incurred by two or more activities of a production process – in this case activities related to collocation. In contrast, Verizon has not shown that the costs at issue are attributable to any collocation activities.

Shared costs do not need to be *directly* attributed to the collocation activity, but can be described in other ways. Neither Verizon Exhibit BKE-1 on rehearing -- nor any part of its cost study or evidence -- satisfactorily

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as "denied costs"). Original Order, at 17.

demonstrate, or show, what elements comprise the denied costs. As such, it is not possible to determine if the denied costs are elements of collocation. Further, Verizon has not proven that the magnitude, or amount, of the costs in column J of Verizon Exhibit BKE-1 on rehearing, are reasonable. The nature of the denied costs is unclear, how they are attributed to collocation activities is unclear, and therefore it can not be determined whether the costs set forth in column J of BKE-1 on rehearing are reasonable.

Had Verizon provided – as it has not -- a reasonable description of the denied costs and how those costs are attributed to collocation, the Commission could, as it must, determine whether Verizon's allocation methodology is reasonable. This would not require Verizon to show that the denied costs are direct costs.

B. It Is Verizon – Not Staff – Who Has Failed To Meet Its Burden of Producing Evidence

Verizon argues that Staff and IRCA attempt to avoid their "burden" of presenting a case that the denied costs are not properly recoverable by raising questions and concerns. Verizon IB at 5-6. As support, Verizon relies upon City of Chicago v. Commerce Commission, for the premise that

> "once a utility makes a showing of costs necessary to provide service under its proposed rates, it has established a prima facie case, and the burden then shifts to others to show that the costs incurred by the utility are unreasonable because of inefficiency or bad faith." 133 Ill. App. 3d 435, 443 (1st Dist. 1985).

Verizon misapplies this holding since the Chicago v. ICC court's finding applies to the timing in which a party brings forth evidence – which is not at issue here. *See* id.

In the Chicago v. ICC case, the Attorney General asserted that Commonwealth Edison ("Edison") did not meet its burden of proof in establishing a prima facie case because Edison did not present evidence about its construction program initially, but only presented the information after the Attorney General challenged the reasonableness of the program. Id. at 442. In fact, the Attorney General in Chicago v. ICC "[did] not attempt to challenge the trial court's determination that the Commission's order was supported by substantial evidence." Id. Rather, the Attorney General asserted that Edison did not, as a matter of law, establish a prima facie case -- although there was ample evidence in the record to support the Commission's finding. Id. The court in Chicago v. ICC ruled that it was unreasonable to require a utility to have the burden of going forward "on any and all issues which are conceivably relevant to the reasonableness of its proposed rates. This . . . would place an impossible burden on the utility of anticipating the basis of every intervenor's objection . . ." Id.

The holding in the Chicago v. ICC case is distinguishable from the facts of this proceeding. In Chicago v. ICC, the court defined at what point in the proceedings each party must go forward with its case. In this proceeding, the issue is whether, at the end of the day, Verizon has made its case. Staff is not challenging the timing of the evidence presented. Instead, Staff is merely

pointing out the complete lack of evidence Verizon has brought forward to demonstrate the reasonableness of its allocation of the costs at issue, and by extension, the propriety of those costs.

Verizon admits – as it must – that it has the burden of proof in this case. Verizon IB at 5. It is accepted Illinois law that "the burden of proof" has two aspects: [1] the burden of producing evidence as to a particular matter; and [2] the burden of persuading the trier of fact. Board of Trade of the City of Chicago v. Dow Jones & Co., Inc., 108 Ill. App.3d 681, 686 (1st Dist. 1982). The burden of producing evidence shifts from party to party during the course of a trial. Id. Once the initial party has made a prima facie case, the burden of going forward shifts to the other party. Baylor v. Theiss, 2 Ill.App.3d 582, 583 (2d Dist. 1971). A prima facie case is when the "evidence would reasonably allow conclusion plaintiff seeks, but also that plaintiff's evidence compels such a conclusion if defendant produces no evidence to rebut it." Black's Law Dictionary at 825 (abridged 6th ed. 1991). As discussed in Staff's Initial Brief, Staff IB at 4-7, and *infra* section A, the evidence Verizon has presented does not constitute a prima facie showing, because Verizon has not described the denied costs sufficiently for the Commission to determine if and how they related to collocation, nor has it shown how the denied costs are attributed to collocation activities. Specifically, Verizon has not shown how it attributed the denied costs to column J of Verizon Exhibit BKE-1 on rehearing. The lack of evidence leaves a void in the evidence that only Verizon can fill. Additionally, it also amounts to a black box that allows Verizon to add costs to its allocator that are not shared costs.

Since Verizon has not explained the nature of the denied costs for the parties to determine how they relate to collocation, nor how the denied costs are attributed to collocation activities, the burden has not shifted to Staff or IRCA. Staff acknowledges the possibility that some of the denied costs could be properly recovered -- should Verizon ever deign to make a proper evidentiary showing regarding those costs. However, Verizon has yet to do so; Staff has demonstrated that the evidence Verizon produced is insufficient for the Commission to determine which costs can be recovered, since Verizon did not define the denied costs in sufficient detail. In sum, Verizon – not the Staff or IRCA -- has not met its burden of producing evidence.

II. CONCLUSION

For the foregoing reason the Staff of the Illinois Commerce Commission respectfully requests that the Commission adopt its recommendation in all particulars, as more fully set forth herein and in its initial brief.

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Respectfully submitted,

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